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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,787	07/10/2006	Benjamin B. Way	RJENK44.001APC	3111
20995 7590 11/21/2008 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER COPPOLA, JACOB C				
ART UNIT 3621		PAPER NUMBER		
NOTIFICATION DATE 11/21/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/563,787

**Applicant(s)**

WAY, BENJAMIN B.

**Examiner**

JACOB C. COPPOLA

**Art Unit**

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 September 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11, 13-15 and 19-32 is/are pending in the application.  
4a) Of the above claim(s) 9-11, 15, 25, 26, 31 and 32 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-8, 13, 14, 19-24 and 27-30 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 06 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 10 July 2006  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Acknowledgements***

1. This action is in reply to the Restriction Election filed on 12 September 2008.
2. Claims 1-11, 13-15, and 19-32 are currently pending and have been examined.
3. All references to the capitalized versions of "Applicants" refer specifically to the Applicants of record. Any references to lower case versions of "applicant" or "applicants" refer to any or all patent "applicants." Unless expressly noted otherwise, references to "Examiner" refers to the Examiner of record while reference to or use of the lower case version of "examiner" or "examiners" refers to examiner(s) generally. The notations in this paragraph apply to this Office Action and any future office action(s) as well.
4. This Office Action is given Paper No. 20081112. This Paper No. is for reference purposes only.

### ***Restrictions***

5. Applicant's election without traverse of claims 1-8, 13, 14, 19-24, and 27-30 in the reply filed on 12 September 2008 is acknowledged.
6. Claims 9-11, 15, 25, 26, 31, and 32 are withdrawn from further consideration pursuant to 37 C.F.R. §1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on 12 September 2008.

***Information Disclosure Statement***

7. The Information Disclosure Statement filed on 10 July 2006 has been considered. An initialed copy of the Form 1449 is enclosed herewith.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-8, 13, 14, 19-24, and 27-30 are rejected under 35 U.S.C. §103(a) as being unpatentable over Arkin et al. (U.S. 2002/0152262 A1) ("Arkin").

10. Regarding claims 1, 21, and 22:

a. Arkin discloses the following limitations:

- i. *a plurality of terminal devices (fig. 3 with associated text); and*
- ii. *a client program arranged to emulate a peer-to-peer user (fig. 4 with associated text).*

b. Arkin does not directly disclose the limitations:

- iii. *a plurality of terminal devices each running a client program arranged to emulate a peer-to-peer user.*

c. However, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to include in the plurality of terminal devices of Arkin's

first embodiment the client program as taught by Arkin's second embodiment since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

11. Regarding claim 2:

d. Arkin discloses the limitations of claim 1, as shown above. Arkin, further, discloses the following limitations:

iv. *a screen saver program, arranged to start execution on detecting cessation of activity by computers users of the terminal device (§ 0145).*

e. Arkin does not directly disclose the limitations:

v. *wherein said client program comprises a screen saver program.*

f. However, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to design the client program of Arkin into the form of a screen saver. One would have been motivated to do so because screen savers are known to be popular programs due to their decorative and entertainment value (definition of a screen saver, see below).

12. Regarding claims 7, 23, and 24:

g. Arkin discloses the following limitations:

vi. *a terminal device arranged to emulate a peer-to-peer user (fig. 4 with associated text), to receive a request to download a file (fig. 4 with associated text), to commence downloading at a first data rate, and, after a time, to reduce*

*the data rate to a second data rate, wherein said second data rate is lower than said first data rate (§ 0102).*

13. Regarding claim 8:

h. Arkin discloses the limitations of claim 7, as described above. Arkin further discloses the limitations:

vii. *A system according to claim 7 in which the terminal device is arranged to receive a request for a segment of a file, the segment comprising only a portion of said file, and to transmit data which does not correspond to said segment so as to corrupt said file (§ 0088).*

14. Regarding claims 3-6, 19, 20, and 27-30, Arkin discloses the limitations of claims 1 and 7, as shown above. Arkin, further, disclose the limitations:

i. Claim 3: *A system according to claim 1 further comprising a server computer arranged to communicate with the terminal devices (figs. 3 and 4 with associated text);*

j. Claim 4: *A system according to claim 3, wherein the server computer is configured to communicate via the Internet with the terminal devices (§ 0072; and figs. 3 and 4 with associated text);*

k. Claims 5, 27, and 28: *A system according to claim 3, wherein the server computer is arranged to maintain a list of works to be protected against piracy, and to supply at least part of said list to said terminal devices (§ 0072; and figs. 3 and 4 with associated text);*

l. Claims 6, 29, and 30: *A system according to claim 3, wherein the server computer is arranged to receive data from the terminal devices indicating one or more peer-to-peer*

*users performing at least one of making pirated files available, and making available details of pirated files held by said one or more users (§ 0072; and figs. 3 and 4 with associated text);*

m. Claim 19: *A system according to claim 1, wherein at least one terminal device is arranged to offer a file which appears to be a file requested by a peer-to-peer user, and to supply said file to the peer-to-peer user, wherein the file is different than the requested file (figs. 3 and 4 with associated text); and*

n. Claim 20: *A system according to claim 7, wherein the terminal device is arranged to respond to the request by downloading a file which appears to be the requested file, wherein the downloaded file is different than the requested file (figs. 3 and 4 with associated text).*

15. Regarding claims 13 and 14:

o. These claims are understood by the Examiner to be of substantially the same scope as claims 2 and 7. Accordingly, claims 13 and 14 are rejected in substantially the same manner as claims 2 and 7.

16. The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

17. Using the broadest reasonable interpretation, the following definitions are relied upon by the Examiner when interpreting claim language:

- p. *screen saver* "A utility that causes a monitor to blank out or display a certain image after a specified amount of time passes without the keyboard being touched or the mouse being moved. Touching a key or moving the mouse deactivates the screen saver. Although modern monitors are not susceptible to this problem, screen savers remain popular for their decorative and entertainment value." (Computer Dictionary, 5<sup>th</sup> Edition, Microsoft Press, Redmond, WA, 2002)

### ***Conclusion***

18. In accordance with *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that the references How Computers Work, Millennium Ed. By Ron White; How Networks Work, Bestseller Ed. By Frank J. Derfler et al.; How the Internet Works, Millennium Ed. By Preston Gralla; and Desktop Encyclopedia of the Internet by Nathan J. Muller, is additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. Each reference is cited in its entirety. Moreover, because these references are directed towards beginners (see *e.g.* "User Level Beginning..."), because of the references' basic content (which is self-evident upon examination of the references), and after further review of the entire record including the prior art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that these references are primarily directed towards those of low skill in this art. Because these references are directed towards those of low skill in this art, the Examiner finds that one of ordinary skill in this art



must—at the very least—be aware of and understand the knowledge and information contained within these references.

19. Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to Jacob C. Coppola whose telephone number is (571) 270-3922. The Examiner can normally be reached on Monday-Friday, 9:00 a.m. - 5:00 p.m. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Fischer can be reached at (571) 272-6779.

20. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, please contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

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November 12, 2008

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